

AMENDED IN ASSEMBLY JUNE 27, 2003

AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE APRIL 2, 2003

AMENDED IN SENATE JANUARY 9, 2003

SENATE BILL

No. 27

Introduced by Senator Figueroa

(Coauthors: Senators Alpert, Kuehl, Romero, and Soto)

(Coauthors: Assembly Members Hancock, Lieber, *Longville*, and
Pavley)

December 2, 2002

An act to amend ~~Sections 1798.80 and~~ *Section* 1798.84 of, and to repeal and add Section 1798.83 to, the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 27, as amended, Figueroa. Personal information: disclosure to direct marketers.

Existing law requires a business to ensure the privacy of a customer's personal information, as defined, contained in records by destroying, or arranging for the destruction of, the records, as specified. Any customer injured by a business' violation of these provisions is entitled to recover damages, obtain injunctive relief, or seek other remedies.

This bill would, subject to specified exceptions, require a business that discloses a customer's personal information, including information relating to income or purchases, to a third party for direct marketing purposes to provide the customer, within 30 days after the customer's written request, a written description of the sources and recipients of

that information and copies of the information disclosed or, in certain instances, alternative information, as specified. The bill would also prohibit a business from conditioning the sale of goods or services on the customer's consent to that disclosure. In addition to the legal remedies provided under current law, a customer would be entitled to recover a civil penalty, up to \$3,000, and ~~attorneys'~~ attorney's fees for a violation of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. For free market forces to have a role in shaping
2 the privacy practices of California businesses and for "opt-in" and
3 "opt-out" remedies to be effective, Californians must be more
4 than vaguely informed that a business might share personal
5 information with third parties. Consumers must, for these reasons,
6 be informed about what kind of information is disclosed, how
7 frequently, and to what kind of third parties. With these specifics,
8 consumers can knowingly choose to opt-in or opt-out or choose
9 among businesses that disclose information to third parties on the
10 basis of how protective the business is of consumers' privacy.

11 ~~SEC. 2. Section 1798.80 of the Civil Code is amended to read:~~
12 ~~1798.80. The following definitions apply to this title:~~

13 ~~(a) "Business" means a sole proprietorship, partnership,~~
14 ~~corporation, association, or other group, however organized and~~
15 ~~whether or not organized to operate at a profit, including a~~
16 ~~financial institution organized, chartered, or holding a license or~~
17 ~~authorization certificate under the law of this state, any other state,~~
18 ~~the United States, or of any other country, or the parent or the~~
19 ~~subsidiary of a financial institution. The term includes an entity~~
20 ~~that destroys records.~~

21 ~~(b) "Records" means any material, regardless of the physical~~
22 ~~form, on which information is recorded or preserved by any~~
23 ~~means, including in written or spoken words, graphically depicted,~~
24 ~~printed, or electromagnetically transmitted. "Records" does not~~
25 ~~include publicly available directories containing information an~~
26 ~~individual has voluntarily consented to have publicly~~
27 ~~disseminated or listed, such as name, address, or telephone~~
28 ~~number.~~

1 ~~(c) “Customer” means an individual who provides personal~~
2 ~~information to a business for the purpose of purchasing, renting,~~
3 ~~or leasing real or personal property or any interest therein or~~
4 ~~obtaining a service from the business.~~

5 ~~(d) “Direct marketing purposes” means the use of personal~~
6 ~~information for marketing or advertising products, goods, or~~
7 ~~services directly to individuals. “Direct marketing purposes” does~~
8 ~~not include the use of personal information (1) by bona fide tax~~
9 ~~exempt charitable or religious organizations to solicit charitable~~
10 ~~contributions or (2) to raise funds from and communicate with~~
11 ~~individuals regarding politics and government.~~

12 ~~(e) “Disclose” means to disclose, release, transfer,~~
13 ~~disseminate, or otherwise communicate orally, in writing, or by~~
14 ~~electronic or any other means to any third party.~~

15 ~~(f) “Established business relationship” means a relationship~~
16 ~~formed by a voluntary, two-way communication between a~~
17 ~~business and a customer, with or without an exchange of~~
18 ~~consideration, for the purpose of purchasing, renting, or leasing~~
19 ~~real or personal property, or any interest therein, or obtaining a~~
20 ~~service from the business, if the relationship has not been expressly~~
21 ~~terminated by the business or customer.~~

22 ~~(g) “Individual” means a natural person.~~

23 ~~(h) “Personal information” means any information that~~
24 ~~identifies, relates to, describes, or is capable of being associated~~
25 ~~with, a particular individual, including, but not limited to, his or~~
26 ~~her name, signature, social security number, physical~~
27 ~~characteristics or description, address, telephone number, passport~~
28 ~~number, driver’s license or state identification card number,~~
29 ~~insurance policy number, education, employment, employment~~
30 ~~history, bank account number, credit card number, debit card~~
31 ~~number, or any other financial information. “Personal~~
32 ~~information” also means any data or information pertaining to an~~
33 ~~individual’s income, assets, liabilities, purchases, leases, or rentals~~
34 ~~of goods, services, or real property, if that information is disclosed,~~
35 ~~or is intended to be disclosed, with any identifying information,~~
36 ~~such as the individual’s name, address, telephone number, or social~~
37 ~~security number or information, such as a list of names and~~
38 ~~addresses, that is derived using any nonpublic personal~~
39 ~~information other than publicly available information, but does~~
40 ~~not include any list, description, or other grouping of consumers,~~

1 ~~or publicly available information pertaining to them that is derived~~
2 ~~without using any nonpublic personal information.~~

3 ~~(i) “Third party” or “third parties” means any of the~~
4 ~~following:~~

5 ~~(1) A business that is not more than fifty percent owned or that~~
6 ~~is not otherwise controlled by the business that has an established~~
7 ~~business relationship with a customer.~~

8 ~~(2) A business that has a chief executive officer or corporate~~
9 ~~president that differs from the chief executive officer or corporate~~
10 ~~president of the business that has an established business~~
11 ~~relationship with a customer.~~

12 ~~(3) A business that is a separate legal entity from the business~~
13 ~~that has an established business relationship with a customer.~~

14 ~~SEC. 3.~~

15 ~~SEC. 2.~~ Section 1798.83 of the Civil Code is repealed.

16 ~~SEC. 4.~~

17 ~~SEC. 3.~~ Section 1798.83 is added to the Civil Code, to read:

18 1798.83. (a) Except as otherwise provided in subdivision (c),
19 if a business has an established business relationship with a
20 customer and intends to disclose, has within the immediately
21 preceding 12 months disclosed, or is currently disclosing the
22 customer’s personal information to third parties and if the business
23 knows or reasonably should know that the third parties will use,
24 have used, or are using the personal information for direct
25 marketing purposes, that business shall, within 30 days after the
26 receipt of a written request from the customer, provide all of the
27 following to the customer free of charge:

28 (1) In writing, the name and address of the source *of the*
29 *personal information disclosed for direct marketing purposes* or,
30 if the source cannot be determined from currently available data,
31 a list of the names and addresses of the businesses ~~from which~~
32 ~~direct marketing information was obtained during the~~ *from which*
33 *personal information was obtained for direct marketing purposes*
34 *during the* immediately preceding 12-month period.

35 (2) True and correct copies of the customer’s personal
36 information that was, is, or the business has committed to disclose
37 to third parties for direct marketing purposes and that is in the
38 possession, custody, or control of the business at the time of the
39 customer’s request. If the business represents to the customer in
40 writing that it cannot provide true and correct copies of the

1 customer's personal information because direct marketing
2 information is not searchable by individual names, the business
3 shall provide a description of the kind of information disclosed *for*
4 *direct marketing purposes* during the immediately preceding
5 12-month period, including, but not limited to, whether name and
6 address, ~~items~~ *products or services* the customer purchased, social
7 security number, telephone number, income, or financial
8 information was disclosed, either directly, or indirectly ~~by~~
9 ~~providing a third party a list of customer names and addresses to~~
10 *a third party pursuant to the third party's criteria.*

11 (3) In writing, the names and addresses of the recipients of the
12 ~~disclosed~~ *customer's personal information disclosed for direct*
13 *marketing purposes*, and what product or service the ~~recipient~~
14 ~~provides or markets.~~ *recipient provides, sells, or markets. If the*
15 *business represents to the customer in writing that it cannot*
16 *provide the names and addresses of the recipients who have*
17 *received the customer's personal information for direct marketing*
18 *purposes because direct marketing information is not searchable*
19 *by individual names, the business shall provide the names and*
20 *addresses of all the recipients of personal information disclosed*
21 *for direct marketing purposes during the preceding 12-month*
22 *period.*

23 (b) No business may condition the sale of goods, services, or
24 other things of value on the customer's consent to the disclosure
25 of the customer's personal information to third parties for direct
26 marketing purposes, or on the customer's waiver of any provision
27 of, right conferred by, or obligation imposed by this title.

28 (c) (1) If the business required to comply with subdivision (a)
29 may not lawfully disclose ~~direct marketing the customer's~~
30 *personal information* to third parties, the business may comply
31 with subdivision (a) by informing the customer of the existence of
32 the legal authority that prevents the disclosure, providing the
33 customer a copy of the legal authority, and affirming in writing that
34 the business is in compliance with the legal authority.

35 (2) If, after the effective date of this title the business required
36 to comply with subdivision (a) adopts and discloses to the public
37 in its privacy policy, a policy of disclosing ~~direct marketing the~~
38 *personal information of customers* only to affiliated businesses
39 that share the brand name ~~as~~ *of* the business required to comply
40 with subdivision (a), so long as the business maintains and

1 discloses ~~that~~ *a the* policy, the business may comply with
2 subdivision (a) by providing the customer a list of all of the
3 affiliated brand name companies and a description of the kind of
4 information disclosed during the preceding 12-month period,
5 including, but not limited to, whether name and address, ~~items~~
6 *products or services* purchased, social security number, telephone
7 number, income, or financial information is disclosed either
8 directly; or ~~indirectly by providing a third party a list of customer~~
9 ~~names and addresses~~ *indirectly to a third party* pursuant to the
10 third party's criteria.

11 (3) If, after the effective date of this title the business required
12 to comply with subdivision (a) adopts and discloses to the public
13 in its privacy policy, a policy of not disclosing ~~direct marketing the~~
14 *personal information of customers* to third parties unless the
15 customer affirmatively agrees to ~~such~~ *that* disclosure, or of not
16 disclosing ~~direct marketing the~~ *personal information of customers*
17 to third parties if the customer has exercised an option that
18 prevents that information ~~to be~~ *from being* disclosed to third
19 parties, and the customer has either not affirmatively agreed or has
20 exercised his *or her* option to prevent those disclosures, as long as
21 the business maintains and discloses the policies the business may
22 comply with subdivision (a) by notifying the customer that the
23 business is not permitted to disclose that information to third
24 parties per the customer's instruction.

25 (d) The following ~~shall~~ *may* not be deemed to be a disclosure
26 of personal information by a business for purposes of this title:

27 (1) Disclosures pursuant to contracts or arrangements
28 pertaining solely to any of the following:

29 (A) The storage, management, or organization of personal
30 information, where the personal information is not further
31 disclosed to third parties.

32 (B) The creation or distribution of marketing or advertising
33 materials for products or services to be offered by the business to
34 customers with whom the business has an established business
35 relationship.

36 (C) The completion of a transaction, not otherwise prohibited
37 by law, between the business and a customer with whom it has an
38 established business relationship or between the business and a
39 new customer if the customer has initiated the transaction.



(2) Disclosures of payment history or other information pertaining to transactions or experiences between the business and a customer to a consumer reporting agency where that information comprises a consumer report, as defined in subdivision (d) of Section 1681a of Title 15 of the United States Code, and use of that information is limited by the federal Fair Credit Reporting Act.

~~SEC. 5.~~

(e) For purposes of this section:

(1) "Customer" means an individual who provides personal information to a business for the purpose of purchasing, renting, or leasing real or personal property or any interest therein, or obtaining a product or service from the business.

(2) "Direct marketing purposes" means the use of personal information for marketing or advertising products, goods, property, or services directly to individuals. "Direct marketing purposes" does not include the use of personal information (A) by bona fide tax exempt charitable or religious organizations to solicit charitable contributions or (B) to raise funds from and communicate with individuals regarding politics and government.

(3) "Disclose" means to disclose, release, transfer, disseminate, or otherwise communicate orally, in writing, or by electronic or any other means to any third party.

(4) "Established business relationship" means a relationship formed by a voluntary, two-way communication between a business and a customer, with or without an exchange of consideration, for the purpose of purchasing, renting, or leasing real or personal property, or any interest therein, or obtaining a product or service from the business, if the relationship has not been expressly terminated by the business or customer.

(5) "Personal information" also means any data or information pertaining to a customer's income, assets, liabilities, purchases, leases, or rentals of goods, services, or real property, if that information is disclosed, or is intended to be disclosed, with any identifying information, such as the customer's name, address, telephone number, or social security number, or any other information, such as a list of names and addresses, that is derived using any personal information other than publicly available information, but that does not include any list, description, or other grouping of consumers, or publicly available information

1 *pertaining to them, that is derived without using any nonpublic*
2 *personal information.*

3 (6) “Third party” or “third parties” means any of the
4 following:

5 (A) A business that is not more than 50 percent owned, or that
6 is not otherwise controlled, by the business that has an established
7 business relationship with a customer.

8 (B) A business that has a chief executive officer or corporate
9 president that differs from the chief executive officer or corporate
10 president of the business that has an established business
11 relationship with a customer.

12 (C) A business that is a separate legal entity from the business
13 that has an established business relationship with a customer.

14 SEC. 4. Section 1798.84 of the Civil Code is amended to read:

15 1798.84. (a) Any waiver of a provision of this title is contrary
16 to public policy and is void and unenforceable.

17 (b) Any customer injured by a violation of this title may
18 institute a civil action to recover damages and, if a violation of
19 Section 1798.83 is alleged, to recover a civil penalty not to exceed
20 three thousand dollars (\$3,000) per violation.

21 (c) Any business that violates, proposes to violate, or has
22 violated this title may be enjoined.

23 (d) A prevailing plaintiff in any action commenced under
24 Section 1798.83 shall also be entitled to recover his or her
25 reasonable ~~attorneys’~~ attorney’s fees and costs.

26 (e) The rights and remedies available under this section are
27 cumulative to each other and to any other rights and remedies
28 available under law.

